

# **Exhibit A**

**REGISTER OF ACTIONS****CASE No. J1-CV-20-003258****Marilu Hernandez vs. Amsher Collection Services, Inc.**§  
§  
§  
§  
§Case Type: **Small Claims**Date Filed: **12/18/2020**Location: **Precinct One****PARTY INFORMATION**

		<b>Attorneys</b>
<b>Defendant</b>	<b>Amsher Collection Services, Inc.</b> Dallas, TX 75201	
<b>Plaintiff</b>	<b>Hernandez, Marilu</b> Austin, TX 78701	<b>BRENT A DEVERE</b> <i>Retained</i> 512-457-8080(W)

**EVENTS & ORDERS OF THE COURT**

<b>OTHER EVENTS AND HEARINGS</b>			
12/18/2020	<b>Original Petition (OCA)</b>		
12/18/2020	<b>Petition/Application via E-File</b>		
12/21/2020	<b>Citation Issued</b>		
12/21/2020	<b>Citation Sent to Private Processor</b>		
12/21/2020	<b>Citation</b>		
	Amsher Collection Services, Inc.	Served	12/22/2020
		Response Due	01/06/2022
01/05/2021	<b>Answer</b>		
01/07/2021	<b>Pending Trial Setting</b>		
01/11/2021	<b>Notice</b>		

**FINANCIAL INFORMATION**

	<b>Plaintiff</b> Hernandez, Marilu		
	Total Financial Assessment		51.00
	Total Payments and Credits		51.00
	<b>Balance Due as of 01/21/2021</b>		<b>0.00</b>
12/21/2020	Transaction Assessment		51.00
12/21/2020	E-File Electronic Payment    Receipt # 2020-59705	Hernandez, Marilu	(51.00)

**JUSTICE CIVIL CITATION**

THE STATE OF TEXAS

**TO: AMSHER COLLECTION SERVICES, INC.  
CT CORPORATION SYSTEM 1999 BRYAN STREET SUITE 900  
DALLAS TX 75201**

**Respondent, in the hereinafter styled and numbered cause:**

**You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Your answer is due by the end of the 14<sup>th</sup> day after the day you were served with these papers. If the 14<sup>th</sup> day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14<sup>th</sup> day that is not a Saturday, Sunday, or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment may be taken against you. For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation.**

**YOUR WRITTEN ANSWER SHALL BE FILED AT 4717 Heflin Lane, #107, Austin, Texas 78721.**

**IF YOU HAVE ANY QUESTIONS, YOU SHOULD CONSULT AN ATTORNEY.**

**Your cause number J1-CV-20-003258 was filed in Justice Court, Precinct One, on December 18, 2020, styled**

**Marilu Hernandez, Petitioner/s vs.  
Amsher Collection Services, Inc. , Respondent/s**

**Issued on the 21st day of December, 2020.**

12/21/2020 1:13:40 PM



---

Sharon Ellerby, Deputy Clerk  
4717 Heflin Lane, #107, Austin, Texas 78721  
Justice of the Peace, Precinct One  
Yvonne M. Williams, Judge

**Petitioner's Attorney**

**Agent**

**Petitioner**

BRENT A DEVERE  
1411 WEST AVENUE SUITE  
200  
AUSTIN TX 78701

MARILU HERNANDEZ  
CARE OF BRENT DEVERE  
1411 WEST AVENUE SUITE  
200  
AUSTIN TX 78701

Cause number is **J1-CV-20-003258**

Case styled: Marilu Hernandez, Petitioner/s vs.  
Amsher Collection Services, Inc. , Respondent/s

----- OFFICER'S RETURN -----

Came to the hand on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ o'clock \_\_\_\_ M.  
Executed at \_\_\_\_\_ within County of Travis at \_\_\_\_\_  
o'clock \_\_\_\_ M. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
delivering to the within named \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

a true copy of this citation together with the accompanying copy of the petition have first  
attached such copy of such petition to such copy of citation and endorsed on such copy of  
citation the date of delivery.

To certify which witness my hand officially:

\_\_\_\_\_  
Constable, Precinct One of Travis County, Texas  
By Deputy \_\_\_\_\_

Filed: 12/18/2020 12:18 PM  
Judge Yvonne M. Williams, JP1  
Travis County, Texas  
J1-CV-20-003258

CAUSE NO. \_\_\_\_\_

MARILU HERNANDEZ,  
*Plaintiff*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE JUSTICE OF THE PEACE

v.

PRECINCT NO. 1

AMSHER COLLECTION SERVICES,  
INC.,  
*Defendant*

TRAVIS COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE COURT:

NOW COMES Plaintiff, Marilu Hernandez ("Plaintiff" herein),  
and complains of Defendant, Amsher Collection Services, Inc.  
("Amsher" or "Defendant" herein), and for cause of action shows the following:

**A. Discovery Level**

1. Plaintiff intends to conduct discovery as per Texas Rules of Civil Procedure 509. Moreover, in accordance with Texas Rule of Civil Procedure 47, Plaintiff claims monetary relief within the jurisdictional limits of this court.

Filed: 12/18/2020 12:18 PM  
Judge Yvonne M. Williams, JP1  
Travis County, Texas  
J1-CV-20-003258

B. Parties

2. Plaintiff, Marilu Hernandez, is a natural person who resides in Texas.
3. Defendant, Amsher Collection Services, Inc., is a foreign corporation that is authorized to do business in Texas. Service may be completed on the following registered agent:

CT Corporation System  
1999 Bryan Street, Suite #900  
Dallas, Texas 75201

C. Jurisdiction

4. Jurisdiction in this Court is proper because the events giving rise to this controversy occurred in Texas. Jurisdiction is also proper in this Court because an action to enforce liability under the FDCPA may be brought in any court of competent jurisdiction. 15 U.S.C. §1692k(d).

D. Factual Allegations

5. This is a lawsuit for claims under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692, *et seq.*

6. According to Amsher, Plaintiff incurred an alleged debt ("alleged debt" herein) with Synovus Bank in her capacity as a co-signor. The alleged debt is thus a "debt" as that term is defined at §1692a(5) of the FDCPA.

7. Due to Plaintiff's financial circumstances, she could not pay the alleged debt, and the alleged debt went into default.

8. The alleged debt was subsequently assigned and/or transferred to Amsher for collection.

9. Amsher is in the business of collecting defaulted consumer debts originally owed to other entities. Amsher is thus a "debt collector" as that term is defined at §1692a(6) of the FDCPA.

10. Amsher reported information regarding Plaintiff's alleged debt to at least one credit bureau, Transunion, as of September, 2020.

11. On or about October 8, 2020, the undersigned counsel sent a letter of representation and a formal dispute to Amsher by electronic transmission.

(See Exhibit A herein incorporated by reference in this pleading). Amsher confirmed receipt of delivery

12. Nevertheless, on or about November 10, 2020, Amsher communicated to Transunion information regarding the alleged debt, but it failed to communicate to Transunion that there was a **dispute** of the alleged debt in direct violation of the FDCPA.

E. Count 1 - Violation of the Fair Debt Collection Practices Act

13. Plaintiff incorporate all facts as alleged in the foregoing paragraphs.
14. 15 U.S.C. §1692e(8) of the FDCPA provides as follows:

**FALSE OR MISLEADING REPRESENTATIONS**

**A debt collector may not use any false, deceptive, or Misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:**

**(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.**

15. Amsher violated 15 U.S.C. §1692e(8) of the FDCPA by failing to communicate the alleged debt was disputed when it communicated credit information to Transunion on or about November 10, 2020.

16. Plaintiff alleges she incurred actual damages as a result of the actions of Amsher by virtue of the damages to her credit report.



E. Count 2 - Violation of the Fair Debt Collection Practices Act

17. 15 U.S.C. § 1692f of the FDCPA provides as follows:

**UNFAIR PRACTICES**

**A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.**

18. The FDCPA is a strict liability statute, and only one violation of the FDCPA is necessary to establish civil liability. *See In re Eastman*, 1, 728 (Bankr.W.D.Tex. 2009) (stating that a false representation need not be intentional to be actionable under 1692e (citing *Pittman v. J.J. Mac Intyre Co.*, B, 613 (D. Nev. 1997))). As such, “the defendant’s culpability is a consideration only in computing damages under the FDCPA.” *Pittman*, 969 F.Supp. at 613 (citing 15 U.S.C. 1692k(b)).

19. Amsher voluntarily elected to report adverse account information about Plaintiff to Plaintiff’s credit bureaus with the apparent purpose of coercing Plaintiff to pay the underlying debt and to facilitate the collection of debts from Plaintiff and other consumers.

20. The failure of Amsher to comply with the FDCPA and to note a dispute on the subject account, in conjunction with adverse credit reporting, is unfair to Plaintiff. Such practices are also unfair to “debt collectors who refrain from using abusive debt collection practices” to debtors who are competitively disadvantaged.

Filed: 12/18/2020 12:18 PM  
Judge Yvonne M. Williams, JP1  
Travis County, Texas  
J1-CV-20-003258

F. Prayer

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff, Marilu

Hernandez respectfully prays that the Defendant, Amsher Collection Services, Inc., be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff, Marilu Hernandez, against Defendant, Amsher Collection Services, Inc., as follows:

- a. Additional damages of **\$1000.00** under 15 U.S.C. §1692k(a)(2)(A);
- b. Actual damages pursuant to 15 U.S.C. §1692k(a)(1); and
- c. Costs and reasonable attorney's fees of at least \$2000.00 pursuant to 15 U.S.C. §1692k(a)(3); and,
- d. Such other or further relief as the Court deems proper.

Respectfully submitted,

/s/Brent A. Devere

Brent A. Devere

SBN#00789256

1411 West Avenue, Suite #200

Austin, Texas 78701

Ph: 512-457-8080 Fax: 512-457-8060

Email: BDevere@1411west.com

Attorney for Plaintiff

*Marilu Hernandez*

**CAUSE NO. J1-CV-20-003258**

<b>MARILU HERNANDEZ,</b>	§	<b>IN THE JUSTICE COURT</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>PRECINCT NO. 1</b>
	§	
<b>AMSHER COLLECTION SERVICES, INC.,</b>	§	
	§	
<b>Defendant.</b>	§	<b>TRAVIS COUNTY, TEXAS</b>

**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant, AmSher Collections Services, Inc. (AmSher), in the above-styled and numbered cause, and files this Original Answer and Affirmative Defenses to plaintiff, Marilu Hernandez's (plaintiff), Original Petition on file herein, and for such Answer respectfully shows the Court as follows:

**I. GENERAL DENIAL**

Pursuant to Rule 502.5 of the Texas Rules of Civil Procedure, AmSher generally denies each and every allegation contained in plaintiff's Original Petition and demands strict proof thereof by a preponderance of the evidence.

**II. AFFIRMATIVE DEFENSES**

Pursuant to the Texas Rules of Civil Procedure, AmSher asserts the following affirmative defenses as authorized by the Texas Rules of Civil Procedure:

1. To the extent any violations are established, any such violations were not intentional and resulted from bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

2. AmSher denies any liability; however, regardless of liability, plaintiff has suffered no actual damages as a result of AmSher's purported violations.

3. One or more claims asserted by plaintiff are barred by the statute of limitations, laches, estoppel, waiver and/or unclean hands.

4. Any harm suffered by plaintiff was legally and proximately caused by persons or entities other than AmSher that were beyond the control or supervision of AmSher or for whom AmSher was and is not responsible or liable.

5. Assuming plaintiff suffered any damages, she has failed to mitigate her damages or take other reasonable steps to avoid or reduce her damages.

6. Plaintiff has failed to state a claim against AmSher upon which relief may be granted.

### **III. PRAYER**

WHEREFORE, PREMISES CONSIDERED, AmSher Collections Services, Inc. prays plaintiff takes nothing by her claims, and for all other relief to which AmSher Collections Services, Inc. may be justly entitled.

Respectfully Submitted,

/s/ Charles R. Penot, Jr.

Charles R. Penot, Jr.

TX Bar No. 24062455

SESSIONS, ISRAEL & SHARTLE, LLC

900 Jackson Street, Suite 440

Dallas, Texas 75202

Telephone: (214) 741-3009

Facsimile: (214) 741-3098

Email: cpenot@sessions.legal

*Attorney for Defendant,*

*AmSher Collection Services, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 5, 2021, a copy of the foregoing *Defendant's Answer and Affirmative Defenses* was electronically filed with the Clerk of the Court, Justice Court, Precinct No. 1 of Travis County, Texas and was served via E-Service and Email upon the following:

Brent A. Devere  
1411 West Avenue, Suite 200  
Austin, TX 78701  
Telephone: (512) 457-8080  
Facsimile: (512) 457-8060  
Email: bdevere@1411west.com  
*Attorney for Plaintiff*

/s/ Charles R. Penot, Jr.  
Charles R. Penot, Jr.